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IN THE

SUPREME COURT OF THE UNITED STATES

No. 87

LOCAL NO. 438 CONSTRUCTION & GENERAL LABORERS' UNION, AFL-CIO,

Petitioner,

VS.

S. J. CURRY, C. D. McKNIGHT, JR., E. G. HIGHTOWER AND J. E. TAPPAN, d/b/a S. J. CURRY & COMPANY, a Partnership,

Defendant.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF OF PETITIONER

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF OF PETITIONER

Petitioner filed Petition for Certiorari to the Supreme Court of the State of Georgia from an opinion and decision of the Supreme Court of said State. The decision of the Supreme Court of the State of Georgia

reported in 123 S.E., 2d 653, 217 Ga. 512, overruled the Superior Court of Fulton County, Georgia, and granted a temporary injunction enjoining Petitioner in Certiorari from engaging in picketing of Defendant in Certiorari.

GROUNDS UPON WHICH JURISDICTION IS INVOKED

The Opinion and Order of the Supreme Court of the State of Georgia from which certiorari was prayed was filed January 4, 1962, and Petition for Certiorari was filed April 3, 1962. Certiorari was granted by the United States Supreme Court on the 21st day of May, 1962, as authorized by 62 Stat. 922(3), 28 U.S.C.A. 1257(3).

The subject matter of this cause has been preempted as well as protected by the United States Government by enactment of the National Labor Relations Act. Title 29, Sec. 141 et seq. U.S.C.A. and the Supreme Court of the State of Georgia had no jurisdiction of this cause.

STATUTES WHICH ARE INVOLVED

Title 29, Section 157, United States Code Annotated, U.S.C. Page .....: 49 Stat. 452, 61 Stat. 140.

"Employees shall have the right to self organization, to form, join, or assist labor organizations, to bargain collectively through representa-

tives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining, or other mutual aid or protection, and shall also have the right to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 158(a)(3) of this title."

Title 29, Section 158(b), United States Code Annotated, U.S.C., page : 49 Stat. 452, 61 Stat. 140, 65 Stat. 601, 73 Stat.525, 542, 545.

"It shall be unfair labor practice for a labor organization or its agents:

"(1) To restrict or coerce (A) employees in the exercise of the rights guaranteed in Section 157 of this title; Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employee in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

"To cause or attempt to cause an employer to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and

the initiation fees uniformly required as a condition acquiring or retaining membership;"

The Statute referred to by the State Supreme Court in its opinion, Section 54-804 of the Code of the State of Georgia, Acts 1947, pages 620, 621, is as follows:

> "COMPELLING PERSONS TO JOIN, OR REFRAIN FROM JOINING LABOR ORGANIZATION, OR TO STRIKE OR REFRAIN FROM STRIKING.—It shall be unlawful for any person, acting alone on in concert with one or more other persons to compel or attempt to compel any person to join or refrain from joining any labor organization, or to strike or refrain from striking against his will, by any threatened or actual interference with his person, immediate family, or physical property, or by any threatened or actual interference with the pursuit of lawful employment by such person, or by his immediate family. (Acts 1947, pp. 620, 621.)"

The Section of the Code of the State of Georgia to which the Supreme Court of Georgia made reference, being Section 66-9906, Acts 1887, page 107, is as follows:

> "UNLAWFULLY PREVENTING LABORERS, ETC., FROM PERFORMING DUTIES.—Any person or persons, who, by threats, violence, intimidation, or other unlawful means, shall prevent or attempt to prevent any person or persons

from engaging in, remaining, or performing the business, labor, or duties of any lawful employment or occupation, shall be guilty of a misdemeanor. (Acts 1887, p. 107.)"

QUESTIONS PRESENTED FOR REVIEW

This Court in granting Petition for Certiorari stated the questions to be reviewed by this Court to be as follows:

(1) Was the decision of the Supreme Court of the State of Georgia from which certiorari was granted by the Supreme Court of the United States a final judgment from which the Supreme Court of the United States could properly grant certiorari?

(2) Did the Supreme Court of Georgia err in holding that it was illegal for the Petitioner to carry a placard in front of the construction job containing the statement: "S. J. Curry & Company, Inc., violating contract with City of Atlanta by not paying wages conforming with those of similar type of work in the Atlanta area. Construction & General Laborers' Union 438, AFL - CIO."? The Court so held. notwithstanding the fact that the Court found that the legend carried upon said sign was true and that S. J. Curry & Company was not paying the prevailing wage in the area even though it had executed a contract with the City of Atlanta for said construction which contract contained the provision: "Wages

will conform with those being paid on similar types of work in the Atlanta area."?

(3) In granting said injunction, said court deprived Petitioner in Certiorari of rights protected by the National Labor Relations Act, Title 29, Section 157 of the United States Code Annotated?

(4) In granting said injunction said court assumes jurisdiction of a cause, the subject matter of which had been pre-empted by enactment of the National Labor Relations Act, Title 29, Section 157-158 (b) of the United States Code Annotated?

STATEMENT OF THE CASE

The undisputed evidence established that the City of Atlanta entered into a contract with the Defendant in Certiorari, S. J. Curry, C. D. McKnight, Jr., E. G. Hightower and J. E. Tappan, doing business as S. J. Curry & Company, a partnership, for construction of a sewage disposal plant known as the South River Sewage Disposal Plant, located in the City of Atlanta, Georgia. It was stipulated that the Defendant in Certiorari during the twelve months immediately preceding the filing of this action purchased raw materials, equipment and supplies in a value in excess of $50,000.00, which were purchased and shipped from points beyond the State of Georgia to points within the State of Georgia. (Tr. page 6.) Said contract contained the following language: "Wages will conform with those being paid on similar types of work

in the Atlanta area". (Tr. page 6.) It was undisputed that the Defendant was paying substantially less than the prevailing wage for such types of work in the Atlanta area. (Tr. Exhibits E, F, G, H, I, J; Tr. pages 19, 20, 23, 24, 26, 27, 28, 29.) It was not disputed that no picketing resulted until six or seven months after a conference with Defendant in Certiorari and not until after the Petitioner made repeated and constant efforts to prevail upon the City of Atlanta to enforce its contract and to require the Defendant to pay the prevailing wage in the area. Several conferences were held with Mr. Jack Savage, the City Attorney of the City of Atlanta, in an effort to have this contract enforced, and a hearing was held before the Board of Aldermen of the City of Atlanta in which the Petitioner presented its contention that the City should enforce its claim and it was undisputed that the Board of Aldermen entered an order stating: "After a lengthy discussion, this matter was referred to Executive Session where the Committee agreed that there is nothing that the City can legally do so as to make Curry *raise his pay scale*". (Emphasis supplied.) (Tr/ Exh E, F pages 3, 4, 5, 20, 21, 25.) It was only after the constant meetings with the City Attorney and the hearing before the Board of Aldermen had proven without avail, and only after the Board of Aldermen had officially stated that there was nothing they would do to enforce the contract that the Petitioner herein placed a picket sign in front of the construction work being done by the Defendant in Certiorari, thereby advising the employees working for the Defendant and the general public that the

Defendant in Certiorari was paying depressed wages in violation of its contract with the City of Atlanta, and was not enforcing its contract in requiring wages to be paid similar to those paid in the Atlanta area. Said picket sign read as follows: "S. J. Curry & Company, Inc., violating contract with City of Atlanta by not paying wages conforming with those of a similar type of work in the Atlanta area. Construction & General Laborers' Local Union 438, AFL - CIO". (Tr. Exhibit E, pages 3, 4, 5; Exhibit F, page 3.) (Tr. pages 3, 4, 5, 21, 22, 25.)

Defendant in Certiorari filed a petition in the Superior Court of Fulton County, Georgia, praying that the Superior Court of Fulton County, Georgia, issue a temporary restraining order, temporary injunction and permanent injunction restraining the Petitioner from engaging in said picketing. (Tr. page 31.) The matter came on for hearing before the Honorable Claude D. Shaw, Superior Court Judge, on application for temporary restraining order, following which the said Judge denied the application for temporary restraining order. Thereupon, the matter was set for hearing upon temporary injunction, and on the 12th day of September, 1961, the matter came on for hearing before the Honorable Ralph H. Pharr, Superior Court Judge, on application for temporary injunction, at which time the evidence as hereinabove stated was fully presented, and the Honorable Ralph H. Pharr, exercising his equity discretion as Superior Court Judge, found that the Petitioner herein was engaging in picketing for the purpose of publicizing the fact

that the Defendant in Certiorari was not paying the prevailing wage in the Atlanta area, in violation of its contract with the city of Atlanta. Said Judge found in favor of Petitioner in Certiorari, and said application for temporary injunction was denied. (Tr. page 41.)

The Defendant prayed an appeal to the Supreme Court of the State of Georgia, and argument upon said appeal was heard and Briefs filed, whereupon said Court rendered its decision on the 4th day of January, 1962. (Tr. page 41.) Said decision held that the language upon the picket signs was true and that the wages being paid were not those conforming with those wages being paid in the Atlanta area and that said failure to pay said wages constituted a breach of contract, but notwithstanding said findings and the findings that the picketing was entirely peaceful at all times, the Court held that the Trial Court was in error in denying the application for temporary injunction and held that the application for temporary injunction should have been granted. On the 16th day of January, 1962, remittitur issued by the Supreme Court of Georgia and judgment was entered overruling the decision of the Honorable Ralph H. Pharr, Judge of the Superior Court of Fulton County, Georgia, and granting the prayer for temporary injunction. Petition for Writ of Certiorari was prayed to this Court on the 3rd day of April, 1962, and on the 21st day of May, 1962, this Court granted Certiorari. (Tr. page 46.)

At the hearing, both in the Superior Court and the Supreme Court of the State of Georgia, Petitioner in Certiorari in oral argument and in Brief before the Supreme Court of Georgia made the contention that to grant the prayers of the Defendant in Certiorari was to violate rights as protected by the Fourteenth Amendment to the Constitution of the United States and Section 7 of the National Labor Relations Act, Title 29, Section 157 of the United States Code Annotated. The contention was similarly made that the subject matter of said cause had been preempted by the United States Government by enactment of the National Labor Relations Act, Title 29, Section 141 et seq. of the United States Code Annotated.

In reaching this rather surprising result, the Supreme Court of Georgia did the following things:

(1) Deprived the Petitioner of life, liberty or property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States, in that said Court deprived the Petitioner of its freedom of speech to publicize by means of peaceful picketing the fact that Defendant in Certiorari was paying depressed wages in violation of its contract and Petitioner's own elected Officials, the Officials of the City of Atlanta, were not enforcing a contract entered into for the benefit of those persons working upon the project and for the benefit of the wage structure of all of labor within the Atlanta area, and that a project being constructed by the tax money of the citizens of Atlanta, including those en-

gaged in picketing, was being expended in violation of the terms of the solemn contract and in such manner as to undermine the wage structure in the Atlanta, Georgia, area.

(2) The Court accepted jurisdiction and issued an injunction in a cause concerning which it did not have jurisdiction of the subject matter of said cause, because of the fact that the subject matter of the said cause had been preempted by the United States Government by enactment of the National Labor Relations Act, Title 29, Section 141 et seq., of the United States Code Annotated.

(3) That the Court, by issuing said temporary injunction restraining said picketing, violated rights of the Petitioner protected by the United States Government by enactment of the National Labor Relations Act, Title 29, Section 141, et seq., United States Code Annotated, and more particularly Section 157 thereof, in that it denied Petitioner in Certiorari the privilege of peacefully engaging in concerted activity to publicize a breach of contract destructive to its members' wages, hours and working conditions.

SUMMARY OF ARGUMENT

This case involves the granting of a temporary injunction by the Supreme Court of the State of Georgia. However, said decision constitutes a final order authorizing this Court to grant certiorari and hear the merits of this cause. It is respectfully submitted

that this Court's action in granting certiorari was correct for the followng reasons:

The issues involved in this cause have been preempted by the United States Government by enactment of the National Labor Relations Act. Furthermore, the action of the State Court constitutes a deprivation of rights protected by the National Labor Relations Act. Therefore, the State Court does not have jurisdiction of the subject matter of this cause and lacks the power to act. Any action of a Court lacking jurisdiction is a complete nullity and nothing happening subsequent to the assumption of jurisdiction can be other than a legal nullity. Therefore, the assertion by a state court of *power* to act in an interlocutory way is final. Whether it has that power may be determined without reference to any further proceedings which may be taken.

It is further submitted that although a temporary injunction in a labor case may be theoretically interlocutory, in actuality it is the final decision in the case. A case in Fulton County, Georgia, does not come on for trial on final judgment until in excess of one year subsequent to the filing of the petition, and in all instances the labor controversy is moot before the case can come on for trial on hearing on final judgment. In the last ten years, forty-six cases have been tried upon application for temporary and permanent injunction, and in every case the temporary injunction hearing was the last proceeding in the case.

and *not a single one* of said forty-six cases over said *ten-year period* of time have gone to final hearing.

The Petitioner in Certiorari was acting entirely legally in engaging in the picketing which was enjoined by the Supreme Court of the State of Georgia. The undisputed evidence clearly established that the defendant in Certiorari was violating a clause of its contract with the City of Atlanta, which contract provided: "Wages will conform with those being paid on similar types of work in the Atlanta area." The Petitioner in Certiorari merely advertised by means of picketing the truthful fact that the Defendant in Certiorari was paying depressed wages in violation of its contract with the City of Atlanta. Construction work is secured by means of competitive bids, and the payment of depressed wages by one company enables said company to underbid those paying the standard wages. The result is a general lowering of wages to compete with the competition. Therefore, the picketing engaged in in this case represented concerted activity of various members of the Petitioner in Certiorari for mutual aid or protection within the meaning of the National Labor Relations Act, Title 29, Section 157, United States Code Annotated. The injunction restraining said picketing granted by the Supreme Court of Georgia, therefore, violated rights protected by the National Labor Relations Act, and the State Supreme Court exceeded its authority in granting said injunction.

The activities engaged in by Petitioner in Certiorari which were enjoined by the Supreme Court of the State of Georgia, are governed by the National Labor Relations Act, Title 29, Section 141 et seq., and the jurisdiction of the subject matter of this cause has, therefore, been preempted by the United States Government, and the Courts of the State of Georgia have no jurisdiction over the subject matter of this cause.

ARGUMENT

This Court unquestionably properly granted Petition for Certiorari notwithstanding the fact that this is an appeal from the granting of a temporary injunction by the Supreme Court of the State of Georgia, for the following reasons:

(1) The issues in this cause have been preempted by the United States Government by enactment of the National Labor Relations Act, Title 29, Section 141 et seq., and more specifically Sections 157 and 158(b) thereof and the Courts of the State of Georgia have no jurisdiction over this cause. The assertion of the State Court of *power* to act in an interlocutory way is final. Whether it has that *power* may be determined without reference to any future proceedings which may be taken.

(2) Although the decision is in theory interlocutory, in actuality it is the final decision in the case. In the last ten years, forty-six cases have been tried upon application for temporary and permanent in-

junction and in *every case* the temporary injunction hearing was the last proceeding in the cause and *not a single one* of said forty-six cases have in the ten-year period of time gone to final hearing.

It is respectfully submitted that any order of a court having no jurisdicton over the subject matter of the cause is a complete nullity. Nothing done subsequent to the decision by the court that it does have such power could in any way alter its lack of jurisdiction or have any effect thereon. Any further proceedings would be equally void and could not in any way touch upon the basic question of whether or not the court had the power to act. The decision by the Court that it does have the power to act is a final decision. Nothing that might happen thereafter, no further proceedings, have any relevance to the question of whether or not the court has basic jurisdiction of the subject matter. The State court would have no more jurisdiction at the close of this cause than the court had when it was originally filed. If the court has no jurisdiction the entire proceeding is a nullity and the Supreme Court of the United States can determine this at any time.

In the case of *Montgomery Building and Construction Trades Council vs. Ledbetter Erection Co.*, (344 U.S., 178, 73 Sup. Ct., 196), Mr. Justice Douglas, with Mr. Justice Black concurring, stated in his dissenting opinion:

"The question presented is the *power* of the state court to issue a temporary injunction in this kind of labor dispute. If petitioners had sought mandamus or another appropriate state writ directed against the judge who issued the temporary injunction, I should have no doubt that it would be a final judgment which we would review. See Bandini Petroleum Co., vs. Superior Court, 284 U.S., 8, 14, 52 S.Ct., 103, 105, 76 L.Ed. 136. Cf. Rescue Army v. Municipal Court, 331 U.S., 549, 565, 67 S.Ct., 1409, 1417, 91 L.Ed. 1666. I see no difference of substance between that case and this. The mischief of temporary injunctions in labor controversies is well known. It is done when the interlocutory order is issued. The damage is often irreparable. The assertion by the state court of *power* to act in an interlocutory way is final. Whether it has that *power* may be determined without reference to any further proceedings which may be taken. Unless the rule of finality is to be purely mechanical, which to date it has not been, see Radio Station WOW v. Johnson, 326 U.S., 120, 124, 65 S. Ct., 1475, 1478, 89 L.Ed. 2092, we should determine now whether the National Labor Relations Act permits a state court to interfere with a labor controversy in a way, which though interim in form, irretrievably alters the status of the dispute or in fact settles it."

Mr. Justice Brandeis, speaking for the full Court in *Myers vs. Bethlehem Ship Building Corporation*,

303 U.S., 41, has laid down a rule of policy which is directly applicable here. We appreciate, of course, that the decision is not decisive, review by this Court of the Circuit Court of Appeals of temporary order and judgments of the Federal District Courts not having the same statutory basis as review of State Court judgments. Nevertheless, the considerations which persuaded the Court in that case to relax its policy of denying review of temporary orders of the Federal District Courts is equally persuasive here, the status of the litigation in that case paralleling the status of the litigation here and similar legal points being at issue. Justice Brandeis stated as follows:

> "The Circuit Court of Appeals should have reversed the decrees for preliminary injunction. It is true that ordinarily the decree of a District Court granting or denying a preliminary injunction will not be disturbed on apepal. But that rule of practice has no implication where, as here, there is an inseparable objection to the maintenance of the suit in point of jurisdiction, and where it clearly appears that the decree was the result of an improvident exercise of judicial discretion."

HEARING UPON APPLICATION FOR TEMPORARY INJUNCTION IS ACTUALLY THE FINAL HEARING IN THE STATE OF GEORGIA

In the State of Georgia the hearing upon the application for temporary injunction is in actuality the final hearing in a labor dispute. In Fulton County, Georgia, a case will not come on for trial upon the

final merits of the controversy within less than one (1) year from the date of the filing of the original petition, (Exhibit 2 to the Petition for Certiorari, Exhibit 1 to this Brief) by which time the controversy is invariably entirely moot, the strike being terminated, the construction project in almost all cases being completed. The only hearing having any possible bearing upon the controversy before said controversy becomes moot is a hearing upon application for temporary injunction. Review of the records of the Superior Court of Fulton County, Georgia, which County encompasses most of the City of Atlanta and is the largest County in the State of Georgia, reveals the fact that beginning in the year 1952 and continuing to date hearing upon application for interlocutory injunction were heard in 46 cases, and not a single one of said cases proceeded to final hearing. The style of said cases and the relief granted is as follows: (Affidavit of Thomas L. Carter, Jr., Exhibit 3 to the Petition for Certiorari, Exhibit 2 to this Brief.)

TEMPORARY INJUNCTION GRANTED RESTRAINING ALL PICKETING AND/OR ENTIRE STRIKE

(Said cases were filed during the two year periods of time set forth under the word "DATE".)

Style	Case No.	Book No.	Page No.	Date
The Jordan Co., vs. Local Union No. 225 United Brotherhood of Carpenters and Joiners of America.	A-90561	S-8	526	1960-61

Style	Case No.	Book No.	Page No.	Date
Morgan Plumbing & Heating Co., vs. Local 72, Plumbers Union.	A-77975	K-8	588	1960-61
The Dickey Construction Co., vs. Local 72, Plumbers Union.	A-79492	L-8	546	1960-61
H. W. Ivey Construction Co., Inc., vs. Local 72, Plumbers Union.	A-90468	S-8	434	1960-61
R. L. Eskew Contracting Co., vs. Local 613, Electrical Workers Union.	A-73411	H-8	706	1958-59
R. L. Eskew Contracting Co., vs. Local 72, Plumbers Union.	A-73635	I-8	18	1958-59
Perry Printing Process Co., vs. Local 72, Plumbers Union.	A-74953	I-8	678	1958-59
Maple Drive Investment Corp., v. Local 85, Sheet Metal Workers Union.	A-68334	E-8	567	1958-59
Huckabee Transport Corp., vs. Local 728, Teamsters Union.	A-73591	H-8	796	1958-59
F. N. Thompson, Inc., vs. District Council No. 38 and Local No. 193, Printers Union.	A-68018	E-8	409	1958-59
H. W. Ivey Construction Co., Inc., cs. Local 438, Laborers Union.	A-68595	E-8	698	1958-59
The Bonny Corporation vs. Local 438, Laborers Union.	A-76808	K-8	4	1958-59
H. W. Ivey Construction Co., vs. Local 438, Laborers Union.	A-76809	K-8	13	1958-59
Johnson Freight Lines, Inc., vs. Local 728, Teamsters.	A-68453	E-8	698	1958-59
Dixie Ohio Express, Inc., vs. Local 728, Teamsters.	A-68454	E-8	698	1958-59
Ryder Truck Lines, Inc., vs. Local 728, Teamsters Union.	A-77184	K-8	192	1958-59

Style	Case No.	Book No.	Page No.	Date
Maple Drive Investment Corp., vs. Local 926, Operating Engineers.	A-68505	E-8	653	1958-59
Maple Drive Investment Corp., vs. Local 438, Laborers Union.	A-68596	E-8	698	1958-59
Georgia Utility Construction Co., vs. Local 72, Plumbers; Local 438, Laborers Union; and Local 926 Operating Engineers Union.	A-63539	B-8	570	1956-57
Campbell Coal Co., vs. Local 859, Teamsters Union; Local 926, Operating Engineers; Local 438, Laborers Union.	A-54285	V-7	743	1956-57
Loo Mac Freight Lines, Inc., vs. Local 728, Teamsters Union.	A-56267	X-7	134	1956-57
The Thomas Pipe Line Co., Inc., vs. Local 225, Carpenters Union.	A-57717	Y-7	58	1956-57
H. W. Ivey Construction Co., vs. Bricklayers and Masons Union No. 8 of Georgia	A-51320	V-7	60	1954-55
Atlanta Steel Erectors, Inc., vs. Local 859, Teamsters Union.	A-47283	R-7	442	1954-55
George's Pick-Up and Delivery Service vs. Local 728, Teamsters Union.	A-49028	S-7	51	1954-55
Lance Roofing Co., Inc., vs. Local 136, United Slate Tile & Composition Roofers Union.	A-49087	S-7	44	1954-55
F. A. Nart Mfg. Co. vs. Local 122, Ladies Garment Workers Union.	A-44558	P-7	679	1954-55
Lockheed Air Craft Corp. vs. Local 438, Laborers Union.	A-33165	I-7	583	1952-53
Southern Bell Telephone & Telegraph Co., vs. Local 10-322, Communications Workers Union, et al.	A-29643	G-7	422	1952-53

INJUNCTION GRANTED RESTRAINING OR LIMITING PICKETING CONDUCT

Style	Case No.	Book No.	Page No.	Date
Southern Airways, Inc., vs. Airline Pilots Association International.	A-81199	M-8	600	1960-61
McGregor & Werner, Inc., vs. Atlanta Bookbinders and Bindery Women's Union Local No. 96, International Brotherhood of Bookbinders, AFL - CIO.	A-88153	R-8	77	1960-61
Aero Corporation vs. Atlanta District Lodge 46, Machinists AFL - CIO.	A-85468	P-8	334	1960-61
John W. Burdette vs. Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL - CIO, Local No. 732.	A-88083	R-8	42	1960-61
Golian Steel and Iron Co., vs. Shopmen's Local 616, Iron Workers, AFL - CIO.	A-75089	I-8	745	1958-59
Atlantic Steel Co., vs. Local 2401, Steel Workers Union.	A-70517	G-8	59	1958-59
Pleasure Togs, Inc., vs. Local 122, Ladies Garment Workers Union.	A-60484	Z-7	64	1956-57
Swift & Co. vs. Local 355, United Packing House Workers Union.	A-61040	A-8	120	1956-57
American Box and Paper Co., vs. Local 8, Printing Pressmen and Assistants Union.	A-49039	S-7	520	1954-55
Parks Garment Co., vs. Local 122, Ladies Garment Workers Union.	A-47129	R-7	365	1954-55
Dixie Wholesale Co., Inc., vs. Local 728, Teamsters Union.	A-50342	T-7	371	1954-55

Style	Case No.	Book No.	Page No.	Date
Metal Arts Mfg. Co. vs. District Lodge No. 46, Fulton Lodge No. 2, Machinists Union.	A-37855	L-7	528	1952-53

TEMPORARY INJUNCTION DENIED

Style	Case No.	Book No.	Page No.	Date
Bill's Delivery Service, Inc., vs. Local 728, Teamsters Union.	A-57531	X-7	766	1956-57
Southern Railway Co., vs. Local Lodge No. 354, Brotherhood of Railway Carmen.	A-57495	X-7	748	1956-57
Pilot Freight Carriers, Inc., vs. Local 312, Teamsters Union.	A-44949	Q-7	75	1954-55
Pilot Freight Carriers, Inc., vs. Local 182, Teamsters Union.	A-44903	Q-7	52	1954-55
Pittsburgh Plate Glass Co. vs. Local Union 193 and District Council No. 38, Painters Union; Atlanta Bldg., and Construction Trades Council.	A-40342	N-7	171	1952-53

It will be observed from the above record that in a full decade only five cases have resulted in a denial of application for injunction, and in not a single case within the last ten years has the matter proceeded beyond the temporary injunction stage.

It will be further noted that all of the cases in which application for injunction was denied were heard in excess of five years ago. Within the last five years a total of 18 temporary injunctions have been granted preventing all picketing and a total of

6 injunctions have been granted restraining or limiting picketing conduct, and in *not a single case* has the application for injunction been denied. The first denial of an application for injunction in the Superior Court of Fulton County in the last five years was the case at bar, which decision was promptly overruled by the Supreme Court of the State of Georgia.

In *none* of said cases over a period of *ten years* did the case ever come on for a final hearing, but the temporary injunction hearing was completely determinative of the cause.

It is respectfully submitted that the purposes of the rule of the Supreme Court of the United States that it will not grant certiorari from a decision at an interlocutory stage of the proceedings below but will grant certiorari from a final judgment only do not have applicably in the situation found in the case at bar. For all practical purposes the interlocutory injunction hearing in the State of Georgia and most particularly in Fulton County, Georgia, the most populace County in the State of Georgia, is the final hearing ever held in a labor relations matter. A total of 46 cases have been held involving applications for temporary injunctions in the labor relations field within the last ten years. In this period of time *not a single case* has gone to hearing upon final application for injunction for the very apparent and important reason that it takes approximately a year, or more for a case to reach the calendar on application for final injunction, and the matters are always moot by the time they could

be heard on application for final injunction. The hearing which determines the rights of the parties and which determines whether the picketing shall continue at such time as it is not moot is invariably the temporary injunction hearing. There is no final hearing in these matters. The temporary injunction hearing is for all practical purposes the final hearing and the only hearing that can have any possible consequences relevant to any of the matters involved in those litigations. For the Court to refuse to hear any case because it is an appeal from a temporary judgment, which injunction will remain in full force and effect until long after the construction project is completed and the dispute is at an end, is to deny to the parties therein absolutely all redress.

The decision of the Supreme Court of the State of Georgia in the case at bar involves a most serious violation of the Bill of Rights as protected against State action by the Fourteenth Amendment to the Constitution of the United States. It constitutes an invasion of the hard won Anglo-Saxon principle of freedom of speech, including the right to criticise any public Official in any truthful, peaceful manner. It also constitutes an invasion by the Courts of the State of Georgia of a field of law preempted by the United States Government by enactment of the National Labor Relations Act, Title 29, Section 141 et seq. There will be no redress at any time in cases of this kind unless relief is granted as prayed.

The case at bar is not an isolated incident of the Supreme Court of the State of Georgia misinterpreting the decisions of the Supreme Court of the United States and assuming jurisdiction of a clearly preempted field. A body of precedent is being established in the State of Georgia, which it is respectfully submitted is inconsistent with the decisions of the Supreme Court of the United States and no redress has been obtainable because of the fact that said cases were always determined at the temporary injunction stage and the cases never reached final hearing.

In the case of *Ellis vs. Parks*, 212 Ga., 540, 93 S. E. 2d, 708, decided July 10, 1956, the Supreme Court of Georgia found that temporary injunction should issue because the union had been found by the United States District Court to be liable in damages under Section 303 of the National Labor Relations Act, Title 29, Section 187 U.S.C.A., for striking for recognition in the face of the certification of another union by the National Labor Relations Board. Said United States District Court case was styled as *Parks vs. Atlanta Printing Pressmen & Assistants' Union*, 150 Fed. Supp., 246, and said case was appealed to the United States Fifth Circuit Court of Appeals, which rendered opinion reported in 243 Fed. 2d, 284. The State Court granted said temporary injunction because of a holdng in said damage suit in Federal Court that the National Labor Relations Act had been violated, the State Supreme Court stating with reference to Federal preemption the following:

"This State has the power to enforce its Constitution and laws in such a case, and the offenders can find no refuge behind the Taft-Hartley Act, 29 U.S.C.A., Section 141, et seq. That law was not intended to protect unlawful conduct."

The case at bar represents a mere extension of the decision of the Supreme Court of the State of Georgia in the case of *Fleming vs. H. W. Ivey Construction Co.*. reported in 215 Ga., 460, 111 S.E. 2d, 97. Ivey Construction Company was the general contractor engaged in construction of a building at the University of Georgia. The Court found in said case that the union had verbal contracts with a sub-contractor on said project, Wren Construction Company, providing that in all construction in the State of Georgia Wren Construction Company would pay an hourly wage of $3.85. On said construction at the University of Georgia, Wren Construction Company only paid the sheet metal workers $3.35 rather than the $3.85 per hour as agreed. The sheet-metal workers erected a picket sign stating that Wren Construction Company was paying less than the union scale. The Court found that it did not definitely appear from the record whether or not the union represented a majority of the employees. The Superior Court granted a temporary injunction and on appeal the Supreme Court of the State of Georgia held that the grant of said injunction was proper. Examination of the said case will reveal that the Supreme Court of Georgia in so deciding held as follows:

1. Since there was no hiring hall required by the contract, the contract was without consideration and unenforceable.

2. That interstate commerce was not involved. The Court so held notwithstanding the fact that the Ivey Construction Company admitted that some of the materials going into said construction were shipped from points beyond the State of Georgia and said case was determined prior to elimination of the "no man's land" in the 1959 Amendments.

3. Since it did not affirmatively appear in the record that the union represented a majority of the employees, although there was no evidence that they did not represent a majority of the employees, the union had no right to publicize the fact that said company was only paying $3.35 an hour, whereas the prevailing union rate was $3.85 per hour.

4. Although the Court held that the picketing was entirely peaceful, it stated: "As stated heretofore by this Court in Ellis vs. Parks, 212 Ga., 540, 93 S. E. 2d, 708, the State has the power to enforce its Constitution and Laws and the mere fact that the Federal Government has enacted legislation to diminish the cause of labor disputes threatening or obstructing interstate and foreign commerce in nowise excludes the exercise of the police power of the State."

In the said case the Court stated:

"Where there is any evidence to support the ruling of the lower court the discretion of the trial judge will not be controlled in the grant or denial of a temporary injunction. Thus, this court cannot hold that there was an abuse of discretion here. See Log Cabin Steak Co., vs. Burton, 212 Ga., 648, 94 S.E. 2d, 694, and cases cited therein; Woodward vs. Collier, 210 Ga., 239, 78 S.E. 2d, 526, supra; Ellis vs. Parks, 212 Ga., 540, 93 S. E. 2d, 908, supra."

This principle of law was neither mentioned nor applied in the case at bar in which case the trial court had held that injunction should not issue.

It is, therefore, respectfully submitted that the Supreme Court of the State of Georgia has consistently misinterpreted the decisions of the Supreme Court of the United States both on the subject of Federal preemption and on the question of freedom of speech under the Fourteenth Amendment to the Constitution of the United States. Due to the fact that said decisions arise at the temporary injunction state and *without exception* never proceed beyond that stage all of labor throughout the State of Georgia is completely without redress.

Of course, for every case carried to the State Supreme Court there are great numbers of cases in which the trial courts have granted injunctions based on said precedents set by the Supreme Court of the State of Georgia.

The effect of the decisions of the State Supreme Court is quite evident from the fact that in the last 5 years 24 injunction cases have been heard on temporary injunction hearings in Fulton County, Georgia, and not a single case prior to the case at bar was decided in favor of the Union.

The Court has indicated that the rule of finality is not an absolute one and that the language used by Congress in 1789, in conferring power of review in this Court, will not be applied literally or mechanically. As stated by Mr. Justice Frankfurter in *Radio Station WOW v. Johnson*, 326 U.S., 120, at 124, speaking for the majority of the Court:

> "But even so circumscribed a legal concept as appealable finality has a penumbral area . . . Considerations of English usage as well as those of judicial policy would justify an interpretation of 'final judgment' so as to preclude reviewability here where anything further remains to be determined by a state court, no matter how disassociated from the only Federal issue that has finally been adjudicated by the highest court of the State . . .
>
> "Unfortunately, however, the course of our jurisdictional history has not run as smoothly as such a mechanical rule would make it. To enforce it now, or to pronounce it for the future, would involve disregard of at least two controlling precedents, both of them expressing the views

> of numerous courts, and one of which has stood in our books for nearly a hundred years, in an opinion carrying the authority, especially weighty in such matters, of Chief Justice Taney."

In the eairlier case referred to in the above quoted opinion—*Forgay vs. Conrad*, 6 How. 201, Mr. Chief Justice Taney first indicated a policy of liberally interpreting and applying the requirement of finality as follows:

> "The question upon the motion to dismiss is whether this is a final decree, within the meaning of the Acts of Congress. Unfortunately, it is not final, in the strict, technical sense of that term. But this Court has not heretofore understood the words 'final decrees' in this strict and technical sense, but has given to them a more liberal, and, as we think, a more reasonable construction, and one more consonant to the intention of the Legislature."

Republic Natural Gas Company vs. Oklahoma, 334 U.S., 62, followed *Radio Station WOW v. Johnson*. Mr. Justice Frankfurter, again speaking for the majority, indicated an additional area in which the requirement of finality would not be rigidly applied. In discussing a situation in which review would be premitted even though no technical finality was present, Justice Frankfurter indicated that a rigid application would not be required and that the rule would be relaxed where there existed "any immediate threat

of irreparable damage . . . rendering postponed review so illusory as to make the decree 'final now or never'."

Mr. Justice Rutledge, dissenting in the *Republic Natural Gas Company* case, supra, reviewed the decisions of this Court which abjure a rigid and literal interpretation of the word "final" as appears in Section 1257 of the U. S. Code and concluded as follows:

> "The fact that all phases of the litigation are not concluded does not necessarily defeat our jurisdiction . . . But not every decision by a State court leaving the controversy open to further proceedings and orders is either inconclusive of the issues or premature for purposes of review under Section 237. This appears most recently from the decision in *Radio Station WOW vs. Johnson* which applied a settled line of authorities to that effect. Cf. *Richfield Oil Corp. vs. State Bd. of Equalization*, 329 U.S. 69, 91 L.Ed. 80, 67 S. Ct. 156.
>
> "In such cases the formulation of the test of finality made in the Gospel Army and like decisions has not been followed. Instead that question, in the special circumstances, has been treated as posing essentially a practical problem, not one to be determined either by the label attached to the state court judgment by local law, Richfield Oil Corp., vs. State Bd. of Equalization. (US) supra, or by the merely mechanical inquiry whether some further order or proceeding beyond

> 'the ministerial act of entering the judgment' may be had or necessary after our decision is rendered. Radio Station WOW vs. Johnson, supra (326 US, at 125, 89 L.Ed. 2097, 65 S. Ct. 1475) . . . The section's (1257) policy to furnish full, adequate and prompt review outweighed any design to secure absolute and literal 'finality'."

In considering whether to exercise its jurisdiction to review, this Court has considered substance rather than form and has indicated that the face and form of the judgment is not controlling. *Clark vs. Williard*, 292 U. S., 112, at 118; *Gospel Army vs. Los Angeles*, 331 U. S., 543 at 546.

As stated by Mr. Justice Black in his dissenting opinion in the *Montgomery Building & Construction Trades Council Case, supra.*, "The assertion by the State Court of Power to act in an interlocutory way is final. Whether it has that power may be determined without reference to any future proceeding which may be taken." It is further respectfully submitted that the Montgomery Building & Construction Trades Council case differed from the case at bar in that no showing was made in that case that in no case could a decision be reached on a hearing upon application for permanent injunction. In the case at bar the records of the Superior Court of Fulton County, Georgia, have been completely researched for a *full decade* and in said period of ten years although 46 cases involving injunctions have been processed *not one single case* has ever proceeded to hearing beyond

the so-called temporary injunction stage. It is, therefore, apparent that what the Court is asked to review in this case is actually a final judgment.

Where the State Court lacks jurisdiction everything done by the State Court is a nullity. No pleadings filed or evidence presented can in any way influence or alter that fact. The question as issue is jurisdiction of the Court. If the Court lacks jurisdiction there is no need to determine anything else and all else become superfluous.

In an area where denial of certiorari until all of the null and void proceedings following the assumption of jurisdiction is not utterly destructive of the rights of the parties, the Court could wait until the completion of said void proceedings to grant certiorari. However, were the basic rights of labor and the uniform policy of the United States Government will be utterly thwarted unless certiorari is granted it is respectfully submitted that the Court should not permit such a result to flow from a completely void proceeding.

That the policies of the United States as set forth in the National Labor Relations Act are being completely thwarted is evidenced by the fact that in Fulton County, Georgia, whose population is well in excess of 500,000 people, not a single labor injunction case has gone to hearing on final injunction in the last ten years an no labor union has won a single injunction case in over five years.

There can, therefore, be no doubt that this Court was correct in granting certiorari in this case.

THE ACTIONS OF PETITIONER IN CERTIORARI WERE COMPLETELY LEGAL

It is herewith respectfully submitted that the important and pertinent facts in this cause are without dispute. It is not disputed that the contract between the Defendant in Certiorari and the City of Atlanta contained a provision as follows: "Wages will conform with those being paid on similar types of work in the Atlanta area". It is not disputed and is found by both the Trial Court and the Supreme Court of the State of Georgia that this contract was being violated and that the employees were not being paid the wages being paid for similar type of work in the Atlanta area. It is not disputed and is found both by the Trial Court and the Supreme Court of the State of Georgia that the picketing was at all times peaceful. There is no allegation of any secondary boycott activity or any other violation of law.

The Supreme Court of Georgia states that picketing was a violation of the State's Right To Work Law. However, there is no evidence in this case to sustain such a conclusion. It is found that an officer of another organization in the month of January made a statement to Defendant in Certiorari that the Defendant in Certiorari must employ union labor. However, there is no evidence at all in the record that the Petitioner in Certiorari at any time made any demand relating to who must be employed. Irrespec-

tive of this fact the evidence is undisputed that no action was taken by any union following the conference in January, 1961, and there was no attempt to compel the employer to in any way violate the State Right To Work Law. The Petitioner in Certiorari did concern itself with having the wage rate increased to conform with the normal wage rate in the area and to conform to the rate Defendant in Certiorari had agreed to pay in its contract with the City of Atlanta. The Petitioner in Certiorari exhausted every possible means to have this wage rate raised before publicizing the fact that depressed wages were being paid in violation of said contract. It is completely undisputed that numerous conferences were held with the City Attorney of the City of Atlanta in an effort to have the wage rate as set forth in the contract complied with and the matter was finally carried to the City Board of Aldermen and the Board of Aldermen in their Order as hereinabove quoted made plain that the only request made by the Petitioner in Certiorari was that the wages be increased. It is undisputed that it was made plain to the City Attorney in all of said conferences that the union was making no contention that any person should be discharged or any person hired, but was only seeking to protect the wage structure in the area. Not one word of evidence appears in the record to the effect that there was any attempt made throughout the time of these conferences with the City Attorney and this hearing before the City Board of Aldermen stretching over a period of many months immediately prior to the picketing to compel the employment of union labor, nor was anyone even request-

ed to do so. In view of these facts the Trial Court found that the picketing was for the purpose of publicizing said breach of contract relating to the wage structure and was a protected exercise of freedom of speech and could not be enjoined. On the original application for temporary restraining order another Judge refused temporary restraining order on the same ground. There is no basis in the evidence on the undisputed facts of any finding that the picketing in this cause was for an illegal purpose. The Petitioner in Certiorari showed an unusual amount of patience in exhausting every other method of getting the wage scale increased, and only after six or seven months of persistent futile efforts and only after the City Board of Aldermen had ruled that they would do nothing about the matter did the Petitioner in Certiorari resort to its only remaining redress, which was to call to the attention of the public, including Defendant in Certiorari's employees, the detriment that was being done to the wage structure of labor in the Atlanta area.

The Petitioner is not a group of outsiders or interlopers involving itself in something that does not concern it. The undisputed evidence establishes that most construction projects are given on competitive bids, and that a company paying depressed wages can underbid the companies who are paying the union scale. The result is that those companies paying the union scale will eventually go bankrupt for want of securing successful bids or to prevent such a result must in turn reduce their wages to that of the de-

pressed wage structure of the company not paying the stardard wage. The ultimate result of this cycle is the complete destruction of all of the hard won wage rates won by labor over many years. It was to prevent this result that Petitioner concerned itself with this breach of contract. It is further submitted that Petitioner was not a disinterested outsider because this was not a contract between two private employers, but it was a contract which had been entered into by the City of Atlanta, of which Petitioner is a part. As citizens of the City of Atlanta the Petitioner had a right to concern itself with the actions of the City of Atlanta, particularly when they had a direct bearing upon wages, hours and working conditions, the betterment of which is the primary funetion and purpose of existence of the Petitioner. The funds being expended for construction of this project were being paid out of the City Treasury, which receives its funds entirely from the taxes exacted from the citizens of Atlanta including the members of the Petitioner Union. Therefore, the Petitioner had a very direct and real concern in this breach on contract.

In the case of *American Federation of Labor vs. Swing*, 312 U.S., 321, the Court said:

> "A State cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of eco-

nomic interest of all engaged in the same industry has become a commonplace. American Founderies vs. Tri-City Council, 257 U.S., 184, 209. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ."

The National Labor Relations Board, in the case of *Plumbers and Pipefitters' Union (Keith Riggs Plumbing & Heating Contractor)* 50 LRRM 1313, 137 NLRB. No. 121, had before it a case for decision in which picketing had been engaged in to publicize a non-union employer's sub-standard wages and working conditions. The Board held:

"A labor union normally seeks to organize the unorganized and to negotiate collective bargaining contracts with employers, but also has a legitimate interest apart from organization or recognition that employers meet prevailing pay scales and employee benefits for otherwise employers paying less than the prevailing wage scale would ultimately undermine the area standards. Indeed the importance of maintaining area standards as a matter of public as well as union interest was long ago endorsed by Congress by its enactment of the Davis-Bacon Act (40 U.S. Code, Section 273-a, et seq.,) relating to public contracts. It has application, of course, whether or not employees of public contractors are organized or have a collective bargaining contract."

It is respectfully submitted that the record is without dispute that the picketing was entirely peaceful, that the Defendant in Certiorari had executed a contract with the City of Atlanta providing that it should pay the prevailing wage in the area; that the Defendant in Certiorari was not paying the prevailing wage in the area, and was, therefore, violating its contract with the City of Atlanta, and that all that the Petitioner in Certiorari was doing was advertising the truthful facts by means of lawful concerted activity. Certainly neither of the Georgia statutes cited by the Court can have any applicability. This action had no relationship to Georgia Section 54-804, which deals with "compelling persons to join or refrain from joining labor organizations or to strike or restrain from striking", and it has no relationship to Georgia Section 66-9906, which provides: "Any person or persons who by threats, violence or intimidation or other unlawful means shall prevent or attempt to prevent any person or persons from engaging in, remaining in, or performing the business, labor or duties of any lawful employment or occupation shall be guilty of a misdemeanor." There was no evidence of any threats, violence, intimidation or other unlawful means. Neither State nor Federal law were in anyway violated, and the actions of the Petitioner in Certiorari constituted protected freedom of speech, which could not be infringed.

THE SUPREME COURT OF GEORGIA DENIED PETITIONER IN CERTIORARI RIGHTS PROTECTED BY THE NATIONAL LABOR RELATIONS ACT

Title 29, Section 157, United States Code Annotated, reads as follows:

> "Employees shall have the right to self organization; to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection and shall also have the right to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 158 (a) (3) of this Title."

The picketing engaged in in this cause represented concerted activity of various members of the Petitioner in Certiorari for mutual aid or protection within the meaning of the above quoted Statute. A group of persons whose wage structure would be utterly destroyed within the area if the action of S. J. Curry & Company and the City of Atlanta persisted were concertedly taking action to bring to the attention of the employees working for Curry and the public generally the fact that their wage structure was being utterly and completely destroyed and that it was being done by means of violation of the contract entered into between Curry and the City of Atlanta.

The Supreme Court of the United States has on numerous occasions held that a State Court cannot prohibit any action which is protected by the National Labor Relations Act. In the case of *Weber vs. Anheuser-Busch, Inc.*, 35 LRRM 2637, 348 U.S. 468, the Supreme Court of the United States said:

> "The Court has ruled that a State may not prohibit the exercise of rights which the Federal Act protects. Thus in Hill vs. Florida, 325 U. S., 538, 16 LRRM 734, the State enjoined a labor union from functioning until it had complied with certain Statutory requirements. The injunction was invalidated on the ground that the Wagner Act included a 'Federally established right to collective bargaining' with which the injunction conflicted. International Union vs. O'-Brien, 339 U.S., 454, 26 LRRM 2082, involved the strike vote provisions of a State Act which prohibited the calling of a strike until a specific Statutory procedure had been followed. The State Act was held to conflict not only with the procedure and other requirements of the Taft-Hartley strike provisions, but also with the protection afforded by Section 7 of that Act. In Amalgamated Association vs. Wisconsin Employment Relations Board, 340 U.S. 383, 27 LRRM 2385, the State Court issued an injunction under a Statute which made it a misdemeanor to interrupt by strike any essential public utility service. It was held that the State Statute was invalid in that it denied a right which Congress had guar-

anteed under Section 7 of the Taft-Hartley Act, the right to strike peacefully to enforce union demands for wages, hours and working conditions. Last term the Court noted in Garner v. Teamsters Union, 346 U. S., 485, 499, that: 'The detailed prescription of a procedure for restraining of specified types of picketing would seem to imply that other picketing is to be free of other methods and sources of restraint. For the policy of the National Labor Management Relations Act is not to condemn all picketing but only that ascertained by its prescribed processes to fall within its prohibitions. Otherwise, it is implicit in the Act that the public interest is served by freedom of labor to use the weapon of picketing. For a State to impinge on the area of labor combat designed to be free is quite as much an obstruction of Federal policy as if the State were to declare picketing free for purposes or by methods which the Federal Act prohibits.' "

Also see *General Drivers, Warehousemen & Helpers Local Union 89, et al, vs. American Tobacco Company, Inc.*, 348 U. S., 978, 35 LRRM 2709.

In the case of *Building Trades Council vs. Garmon*, 359 U. S., 236, 43 LRRM 2838, the injunction was granted by the State Court in a case in which the union admittedly did not represent the employees working on the job. The Court said:

"When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by Section 7 of the Taft-Hartley Act or constitute an unfair labor practice under Section 8, due regard for the Federal enactment requires that State jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of Federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by State law. Nor has it mattered whether the States have acted through laws of broad general application rather than laws specifically directed toward the governments of Industrial Relations. Regardless of the mode adopted, to allow the States to control conduct which is the subject of national regulation would create potential frustration of national purposes."

In the case of *Youngdahl vs. Rainfair, Inc.*, 355 U. S., 131, the Supreme Court said:

"The applicable principles of law ar substantially agreed upon. Respondent concedes that it is engaged in interstate commerce and that its employees are entitled to the protection of the Labor Management Relations Act 1947, 61 Stat., 136, 29 U.S.C. Section 151. Respondent does not contend that the State Court had power to enjoin peaceful organized activity, recognizing that generally the National Labor Relations Board has exclusive jurisdiction of such matters.

Weber vs. Anheuser-Busch, Inc., 348 U.S., 468. Petitioners concede that the State Court had the power to enjoin violence. . . .

". . .

"Accordingly, insofar as the injunction before us prohibits petitioners and others cooperating with them from threatening violence against, or provoking violence on the part of, any of the officers, agents or employees of respondent and prohibits them from obstructing or attempting to obstruct the free use of the streets adjacent to respondent's place of business and the free ingress and egress to and from that property it is affirmed. On the other hand, to the extent the injunction prohibits all other picketing and patrolling of respondent's premises and in particular prohibits peaceful picketing, it is set aside."

THE SUBJECT MATTER OF THIS CASE WOULD BE PREEMPTED EVEN IF THE CONDUCT OF THE PETITIONER IN CERTIORARI CONSTITUTED A VIOLATION OF THE NATIONAL LABOR RELATIONS ACT.

It is respectfully submitted that the actions of the Petitioner in Certiorari in this cause constitute no violation of law, either State or Federal. On the contrary, they constitute a right clearly protected by the National Labor Relations Act. However, even if the actions of the Petitioner in Certiorari were a violation of the National Labor Relations Act they would be

equally preempted and a State Court could not entertain jurisdiction of this cause.

In the case of *Meat Cutters vs. Fairlawn Meats, Inc.*, 353 U. S., 20, the Supreme Court of the United States stated:

> "The conduct here restrained—an effort by a union not representing the majority of his employees to compel an employer to agree to a union shop contract—is conduct of which the National Act has taken hold. Section 8(b)(2) 61 Stat., 141, 29 U.S.C. Sec. 158(b)(2), 29 U.S.C.A., Sec. 158(b)(2). Garner vs. Teamsters etc., Union, supra, teaches that in such circumstances a State cannot afford a remedy parallel to that provided by the Act."

In the case of *Garner v. Teamsters*, 346 U. S., 485, the picket sign read as follows:

> "Local 776 Teamsters Union (AFL) wants employees of General Storage and Transfer Company to join them to gain union wages, hours and working conditions."

The Court held as follows:

> "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and

application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies. . . .

". . .

"Further, even if we were to assume, with petitioners, that distinctly private rights were enforced by the State authorities, it does not follow that the State and Federal authorities may supplement each other in cases of this type. The conflict lies in remedies not rights. The same picketing may injure both public and private rights. But when two separate remedies are brought to bear on the same activity, a conflict is imminent."

In the case of *Hotel Employees Union Local 255 vs. Sax Enterprises*, 358 U. S., 270, the Supreme Court held:

"The judgments of the Supreme Court of Florida in these twelve consolidated cases mus

be reversed. They all concern the power of the Courts of Florida to enjoin organizational picketing at twelve Florida resort hotels. After a series of decisions in regard to these and related cases, the Florida Supreme Court in identical per curiam opinions affirmed the issuance of permanent injunctions against the picketing.

"The Florida courts were without jurisdiction to enjoin this organizational picketing whether it was activity protected by Section 7 of the National Labor Relations Act as Amended, 29 U. S. C. Section 157, or prohibited by Section 8(b)(4) of the Act, 29 U. S. C. Section 158(b)(4)."

It is respectfully submitted that the cases of Hotel Employees Union vs. Sax Enterprises, Inc., supra.; Meat Cutters vs. Fairlawn Meats, Inc., 353 U. S. 20; Garner vs. Teamsters, 346 U. S. 485, and Building Trades Council vs. Garmon, 353 U. S. 27, all related to stranger picketing. In none of said cases did the union represent a majority of the employees. In all of said cases the Supreme Court of the United States held that the cause was preempted.

CONCLUSION

It is, therefore, respectfully submitted that this Court properly granted Certiorari, that all that the Petitioner in Certiorari was doing in this case was peacefully publicizing by means of picketing the truthful facts relating to the dereliction of its own elected

representatives to enforce a contract executed by the City of Atlanta and paid for with the tax money of its citizens. In so doing the members of Petitioner in Certiorari were engaging in concerted activity to protect their wage scale within the area, a right fully protected by Section 7 of the National Labor Relations Act, Title 29, Section 157 U. S. C. A. This action was entirely legal and the injunction granted by the Supreme Court of the State of Georgia infringed upon rights protected by the National Labor Relations Act. Furthermore, the subject matter of this cause has been fully preempted by enactment of the National Labor Relations Act, and the Courts of the State of Georgia have absolutely no jurisdiction in this cause.

It is, therefore, respectfully submitted that the Courts of the State of Georgia having no jurisdiction of the subject matter of this cause, the Supreme Court of the United States should overrule the decision of the Supreme Court of Georgia and dissolve the temporary injunction granted by said Court.

Respectfully submitted

POOLE, PEARCE & HALL

BY: Edwin Pearce

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* * *

CERTIFICATE OF SERVICE

I hereby certify that I have served ~~a copy~~ 5 copies of the above Brief of Petitioner by mailing ~~a copy~~ 2 copies of same, by registered mail, to Robert B. Langstaff, Attorney at Law, P. O. Box 747, Albany, Georgia, Attorney for Respondents.

This 23rd day of August, 1962.

John S. Patton

John S. Patton

APPENDIX

"EXHIBIT 1."

IN THE

SUPREME COURT OF THE UNITED STATES

LOCAL NO. 438 CONSTRUCTION & GENERAL LABORERS' UNION, AFL - CIO,

VS. Case No. .....

S. J. CURRY, C. D. McKNIGHT, JR., E. G. HIGHTOWER and J. E. TAPPAN, DOING BUSINESS AS S. J. CURRY & COMPANY, A PARTNERSHIP

AFFIDAVIT

GEORGIA, FULTON COUNTY.

I, J. W. SIMMONS, being first duly sworn do hereby make oath that I am Clerk of the Superior Court of Fulton County, Georgia, and that the average time required for a case to come to trial on the final merits in the Superior Court of Fulton County, Georgia, is in excess of one (1) year from the date of the filing of the original petition.

/s/ J. W. Simmons.
J. W. Simmons, Clerk, Superior
Court of Fulton County, Georgia.

Sworn to and subscribed
before me, this 22nd day of March, 1962.

/s/ Estelle U. Roberts,
Notary Public, Fulton County, Georgia.
My Commission Expires June 13, 1965.

(SEAL)

"EXHIBIT 2."

IN THE
SUPREME COURT OF THE UNITED STATES

LOCAL NO. 438 CONSTRUCTION & GENERAL LABORERS' UNION, AFL - CIO,

VS. Case N. .....

S. J. CURRY, C. D. McKNIGHT, JR., E. G. HIGHTOWER and J. E. TAPPAN, DOING BUSINESS AS S. J. CURRY & COMPANY, A PARTNERSHIP.

AFFIDAVIT

GEORGIA, FULTON COUNTY.

I, THOMAS L. CARTER, JR., Attorney, being first duly sworn, hereby solemnly swear that I have carefully searched the records of the Superior Court Clerk's Office of Fulton County, Georgia, and that said records reveal only the following cases since the year 1952 in which injunctions have been granted or denied against labor unions, and in none of said cases did the case come on for trial on final hearing. Said cases are as follows:

TEMPORARY INJUNCTION GRANTED RESTRAINING ALL PICKETING AND/OR ENTIRE STRIKE

(Said cases were filed during the two year periods of time set forth under the word "DATE".)

Style	Case No.	Book No.	Page No.	Date
The Jordan Co., vs. Local Union No. 225, United Brotherhood of Carpenters and Joiners of America.	A-90561	S-8	526	1960-61
Morgan Plumbing & Heating Co., vs. Local 72, Plumbers Union.	A-77975	K-8	588	1960-61
The Dickey Construction Co., vs. Local 72, Plumbers Union.	A-79492	L-8	546	1960-61
H. W. Ivey Construction Co., Inc., vs. Local 72, Plumbers Union.	A-90468	S-8	434	1960-61
R. L. Eskew Contracting Co., vs. Local 613, Electrical Workers Union.	A-73411	H-8	706	1958-59
R. L. Eskew Contracting Co., vs. Local 72, Plumbers Union.	A-73635	I-8	18	1958-59
Perry Printing Process Co., vs. Local 72, Plumbers Union.	A-74953	I-8	678	1958-59
Maple Drive Investment Corp., v. Local 82, Sheet Metal Workers Union.	A-68334	E-8	567	1958-59
Huckabee Transport Corp., vs. Local 728, Teamsters Union.	A-73591	H-8	796	1958-59
F. N. Thompson, Inc., vs. District Council No. 38 and Local No. 193, Printers Union.	A-68018	E-8	409	1958-59
H. W. Ivey Construction Co., Inc., vs. Local 438, Laborers Union.	A-68595	E-8	698	1958-59
The Bonny Corporation vs. Local 438, Laborers Union.	A-76808	K-8	4	1958-59
H. W. Ivey Construction Co., vs. Local 438, Laborers Union.	A-76809	K-8	13	1958-59
Johnson Freight Lines, Inc., vs. Local 728, Teamsters.	A-68453	E-8	698	1958-59

Style	Case No.	Book No.	Page No.	Date
Dixie Ohio Express, Inc., vs. Local 728, Teamsters Union.	A-68454	E-8	698	1958-59
Ryder Truck Lines, Inc., vs. Local 728, Teamsters Union.	A-77184	K-8	192	1958-59
Maple Drive Investment Corp., vs. Local 926, Operating Engineers.	A-68505	E-8	653	1958-59
Maple Drive Investment Corp., vs. Local 438, Laborers Union.	A-68596	E-8	698	1958-59
Georgia Utility Construction Co., vs. Local 72, Plumbers; Local 438, Laborers Union; and Local 926, Operating Engineers Union.	A-63539	B-8	570	1956-57
Campbell Coal Co., vs. Local 859, Teamsters Union; Local 926, Operating Engineers; Local 438, Laborers Union.	A-54285	V-7	743	1956-57
Loo Mac Freight Lines, Inc., vs. Local 728, Teamsters Union.	A-56267	X-7	134	1956-57
The Thomas Pipe Line Co., Inc., vs. Local 225, Carpenters Union.	A-57717	Y-7	58	1956-57
H. W. Ivey Construction Co., vs. Bricklayers and Masons Union No. 8 of Georgia.	A-51320	V-7	60	1954-55
Atlanta Steel Erectors, Inc., vs. Local 859, Teamsters Union.	A-47283	R-7	442	1954-55
George's Pick-Up and Delivery Service vs. Local 728, Teamsters Union.	A-49028	S-7	51	1954-55
Lance Roofing Co., Inc., vs. Local 136, United Slate Tile & Composition Roofers Union.	A-49087	S-7	44	1954-55
F. A. Nart Mfg. Co., vs. Local 112, Ladies Garment Workers Union.	A-44558	P-7	679	1954-55

Style	Case No.	Book No.	Page No.	Date
Lockheed Air Craft Corp., vs. Local 438, Laborers Union.	A-33165	I-7	583	1952-53
Southern Bell Telephone & Telegraph Co., vs. Local 10-322, Communications Workers Union, et al.	A-29643	G-7	422	1952-53

INJUNCTION GRANTED RESTRAINING OR LIMITING PICKETING CONDUCT

Style	Case No.	Book No.	Page No.	Date
Southern Airways, Inc., vs. Airline Pilots Association International.	A-81199	M-8	600	1960-61
McGregor & Werner, Inc., vs. Atlanta Bookbinders and Bindery Women's Union Local No. 96, International Brotherhood of Bookbinders, AFL - CIO.	A-88153	R-8	77	1960-61
Aero Corporation vs. Atlanta District Lodge 46, Machinists AFL - CIO.	A-85468	P-8	334	1960-61
John W. Burdette vs. Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL - CIO, Local No. 732.	A-88083	R-8	42	1960-61
Golian Steel and Iron Co., vs. Shopmen's Local 616, Iron Workers, AFL - CIO.	A-75089	I-8	745	1958-59
Atlantic Steel Co., vs. Local 2401, Steel Workers Union.	A-70517	G-8	59	1958-59
Pleasure Togs, Inc., vs. Local 122, Ladies Garment Workers Union.	A-60484	Z-7	64	1956-57

Style	Case No.	Book No.	Page No.	Date
Swift & Co., vs. Local 355, United Packing House Workers Union.	A-61040	A-8	120	1956-57
American Box and Paper Co., vs. Local 8, Printing Pressmen and Assistants Union.	A-49039	S-7	520	1954-55
Parks Garment Co., vs. Local 122, Ladies Garment Workers Union.	A-47129	R-7	365	1954-55
Dixie Wholesale Co., Inc., vs. Local 728, Teamsters Union.	A-50342	T-7	371	1954-55
Metal Arts Mfg. Co., vs. District Lodge No. 46, Fulton Lodge No. 2, Machinists Union.	A-37855	L-7	528	1952-53

TEMPORARY INJUNCTION DENIED

Style	Case No.	Book No.	Page No.	Date
Bill's Delivery Service, Inc., vs. Local 728, Teamsters Union.	A-57531	X-7	766	1956-57
Southern Railway Co., vs. Local Lodge No. 354, Brotherhood of Railway Carmen.	A-57495	X-7	748	1956-57
Pilot Freight Carriers, Inc., vs. Local 312, Teamsters Union.	A-44949	Q-7	75	1954-55
Pilot Freight Carriers, Inc., vs. Local 182, Teamsters Union.	A-44903	Q-7	52	1954-55
Pittsburgh Plate Glass Co., vs. Local Union 193, and District Council No. 38, Painters Union; Atlanta Bldg., and Construction Trades Council.	A-40342	N-7	171	1952-53

/s/ Thomas L. Carter, Jr.
Thomas L. Carter, Jr.

Sworn to and subscribed before me, this 21st day of March, 1962.

/s/ Lillian C. Ray
Notary Public, Georgia, State at Large.
My Commission expires Jan. 16, 1963.